



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 11, 1996

Ms. Nora A. Linares
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR96-0534

Dear Ms. Linares:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 32804 and ID# 34268.

The Texas Lottery Commission (the "commission") received two requests for information. The first request was for the commission's strategic plan for 1995 - 1999, the commission's records inventory, and the commission's disaster recovery plan for paper and electronic records. You claim that the requested disaster recovery plan is excepted from disclosure under section 466.022 of the Government Code as applied through section 552.101 of the Government Code. You also claim that section 552.117 of the Government Code excepts the home addresses and home telephone numbers of agency officials and employees that appear in the disaster recovery plan. You have submitted the entire draft disaster recovery plan to this office for review.

The second request is for the following information in electronic format:

1. The database of lottery retailers for Tarrant County, including all information about locations and sales starting with the first lottery ticket sale through June 7, 1995.
2. The database that tracks non-jackpot lottery tickets that have been redeemed in Tarrant County, and the database that tracks the jackpot winners.
3. A total record count for each of these databases.

You claim that this information is also excepted from disclosure under section 466.022 of the Government Code as applied through section 552.101 of the Government Code and additionally that it implicates privacy rights under section 552.101. You have submitted samples of the requested information to this office for review.¹

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 466.022(1) of the Government Code provides, in part:

The following information is confidential and is exempt from disclosure under the open records law . . .

(1) security plans and procedures of the division or the office of the comptroller designed to ensure the integrity and security of the operation of the lottery.

With regard to the commission's disaster recover plan, you claim that the plan consists of a master plan that identifies functions, equipment, applications, and personnel to perform critical, important, and routine functions for the commission as well as divisional plans and procedures that provide step-by-step procedures to perform the identified functions. The procedures contained in the divisional plans include computer access codes, security codes, and other information you claim that, if released, would compromise the integrity and security of the selection of winning tickets or numbers. You claim that "[t]his information would allow a person to take successful advantage of the transition that the lottery would be undergoing in response to a disaster." In your original briefing to this office, you also claim:

Not all disasters are accidents; neither are they necessarily acts of nature. Without exaggerating the possibility of an intentional disruption of secure existing operations in order to take advantage of the vulnerability that would result during transition, the temptations presented by the large amounts of money associated with the lottery are manifest.

We believe that if the submitted information were disclosed, it could undermine the integrity and security of the operation of the lottery. We therefore conclude that the commission's draft disaster recovery plan falls within the protection of section 466.022 of

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office in connection with the second request for information is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the Government Code. The commission must not release the requested information to the requestor.²

With regard to the information requested by the second requestor, you claim that certain data fields, if released, would also pose a threat to the integrity and security of the lottery. You also claim that the information contained in these fields may provide a method by which persons wishing to implant counterfeit transactions may piggyback onto valid transactions. We agree and conclude that the commission must withhold these fields under section 466.022 as applied through section 552.101 of the Government Code.

You next claim that certain retailer database information is excepted under a right of privacy as applied through section 552.101. You state that the retailer database contains files related to retailer bank account information and electronic funds transfer information. You claim that this is private financial information that is excepted from disclosure under section 552.101, citing Open Records Decision No. 600 (1992) as authority. In Open Records Decision No. 600 (1992), this office concluded that certain background financial information about individuals is excepted from disclosure under the common-law right of privacy. Open Records Decision No. 600 (1992) at 9-12. However, companies and corporations do not have a right of privacy. Open Records Decision No. 620 (1993). The sample you have provided relates only to a business's financial information. Therefore, no privacy interest exists for this information and the commission may not withhold it under the right of privacy under section 552.101.

You claim that release of the database that tracks non-jackpot lottery tickets and jackpot winners will also violate section 466.022 of the Government Code. The databases contain the street address, telephone numbers, and social security numbers or federal employment identification numbers of the prize winners. Section 466.022(c) provides that the street address and telephone number of a prize winner are confidential if the prize winner has not consented to the release of this information. This office has previously held that if the prize winner has not consented to release of this information, the commission must withhold this information. Open Records Letter No. 94-859 (1994); see Letter Opinion No. 92-33 (1992). As of the date of Open Records Letter No. 94-859, no prize winner had consented to release of this information. If any prize winner has since consented to release of this information, the commission may not withhold it. Otherwise, the commission must withhold this information from disclosure.

Additionally, this office has held that social security numbers or federal identification numbers of prize winners are also excepted from disclosure under 42 U.S.C. § 405(c)(2)(C)(III) as applied through section 552.101 of the Government Code. Open Records Letter No. 94-859 (1994). Therefore, the commission must withhold this information from disclosure.

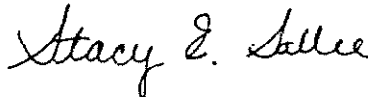
²As we have concluded that the commission may withhold the requested information under section 552.101 of the Government Code, we need not address your claim under section 552.117.

Finally, the commission claims that the non-jackpot lottery database and the database that tracks jackpot winners contain winning ticket validation numbers. You state that these numbers are unique numbers assigned to each ticket that are used to identify winning and losing tickets. You claim that if these validation numbers are released to the public, it would allow for the paying of a winning ticket to a person who does not actually possess the ticket. We conclude that release of the unique ticket validation numbers would undermine the "integrity and security of the operation of the lottery" and must not be released under section 466.022 of the Government Code as applied through section 552.101 of the Government Code.

The second requestor has asked for the requested information in electronic format. We note that, for requests received by a governmental body before September 1, 1995, the effective date of House Bill 1718, a governmental body is not required to provide a requestor with information in a format that is not currently being offered. Attorney General Opinion DM-41 (1991) (governmental bodies required to provide "suitable" copies).³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 32804
ID# 34268

Enclosures: Submitted documents

³We further note that in the last legislative session, the legislature added section 552.231 of the Government Code, which requires governmental bodies to supply information in a requested format in certain circumstances. As this section did not become effective until September 1, 1995, and these requests were received by the commission before September 1, 1995, we do not address the effect of this section on subsequent requests for information in a particular format.

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